IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.336 OF 2005

Arjun Pandharinath Kate ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri Naveen Chomal for the Applicant.
Shri A.S. Gadkari, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : OCTOBER 18, 2005.

P.C.:

1. Rule. The learned A.P.P. waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith. The challenge in this Application is to the order dated 23rd June, 2005 passed by the learned Additional Sessions Judge, Mumbai. By the said order, Application made by the Applicant seeking condonation of delay in filing Revision Application has been rejected.

2. The learned Advocate appearing for the Applicant submitted that sufficient cause was made out for condonation of delay. He submitted that there was no intention on the part of the Applicant to abandon the remedy as earlier a Writ Petition was filed in this Court for challenging the order passed by the learned Judge. The learned A.P.P. pointed out that there was a gross delay on the part of the Applicant

for applying for certified copy of the order passed by the learned Judge. He submitted that there is gross unexplained delay of nine months.

3. I have considered the submissions. An application was made by the Applicant before the learned Magistrate praying that the police be directed to remove the seal put on the premises in dispute and to allow the Applicant to stay in the said premises. The said Application came to be rejected by order dated 26th July, 2004. A Writ Petition was filed in this court for challenging the said order. On 15th September, 2005, this Court permitted the Applicant to withdraw the Writ Petition with liberty to file appropriate proceedings in proper court. It is true that there is a delay in applying for certified copy of the order impugned. It is well settled that while deciding an Application for condonation of delay, a liberal and justice oriented approach is required. Occasion for applying for condonation of delay arises only when there is some default on the part of the litigant. This is not a case where the Applicant was negligent. The prejudice which may be caused to the Respondent can be compensated by ordering of payment of costs. In my view, Application for condonation of delay made by the Petitioner deserves to be allowed.

4. Hence, I pass the following order:

: O R D E R :

i) The impugned Judgment and order dated 23rd June, 2005 is quashed and set aside and Criminal Miscellaneous Application No.272 of 2005 is allowed. Delay in filing Revision Application is condoned.

ii) The learned Sessions Judge will decide the Revision Application in accordance with law.

iii) The Applicant is directed to pay costs of Rs.2,500/- to the Respondent within a period of four weeks from today.

iv) Rule is made absolute in above terms.

v) Parties to act upon an authenticated copy of this order.

JUDGE